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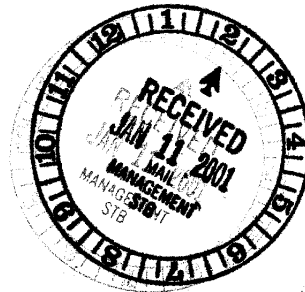
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January 11, 2001

The Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, NW Suite 700  
Washington, DC 20423-0001



Re: Ex Parte No. 582 (Sub No. 1), Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed are an original and 25 copies of the Rebuttal Comments of the American Chemistry Council and American Plastics Council (CMA-5/APC-5). Also enclosed is a 3 1/2" diskette containing the comments and verified statements in WordPerfect 5.x for Windows.

Please stamp the additional copy with the date of receipt and return with our messenger.

Sincerely,

Scott N. Stone

201262

CMA-5  
APC-5

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 582 (Sub-No. 1)  
MAJOR RAIL CONSOLIDATION PROCEDURE



REBUTTAL COMMENTS OF THE  
AMERICAN CHEMISTRY COUNCIL  
AND THE  
AMERICAN PLASTICS COUNCIL

The American Chemistry Council ("the Council") and the American Plastics Council ("APC") respectfully submit these joint rebuttal comments regarding the revised merger rules ("the Proposed Rules") contained in the Board's Notice of Proposed Rulemaking served October 3, 2000 (the "NPR Decision") and published at 65 Fed. Reg. 58974 (October 3, 2000).

Several railroad parties criticize the comments of the Council and APC as calling for "re-regulation" or "forced access."<sup>1</sup> These characterizations are inaccurate. The preferred condition advocated by the Council and APC in the case of any further Class I merger would permit every shipper solely served by the merged system to have access to one alternative rail carrier.<sup>2</sup> But such access would not be "forced." The shipper would not select the alternative carrier unless that carrier could profitably offer the shipper terms more favorable than those offered by the incumbent carrier. Hence if the alternative service were not economically efficient, it would

<sup>1</sup> See, e.g., Reply Comments of the Association of American Railroads at 4; Union Pacific's Reply Comments on Proposed Merger Rules at 15 & n.21; Reply Comments of Norfolk Southern in Response to Notice of Proposed Rulemaking at 7; Reply Comments of Burlington Northern and Santa Fe Railway Co. at 17-19; Reply Comments of CSX Corp. and CSX Transportation at 20, 37.

<sup>2</sup> CMA-2/APC-2.

likely not be offered. Terms of access would not be dictated by the Board, but rather negotiated among the parties, subject to binding “best offer” arbitration in the event the negotiations reached an impasse. Rather than constituting “re-regulation,” imposing this Access Condition would decrease reliance on regulatory mechanisms such as maximum rate challenges because competition would increasingly determine rate and service offerings, consistent with the National Rail Transportation Policy enacted by the Staggers Act. The Access Condition is most fairly characterized as deregulatory, in the same way that telephone industry deregulation – opening up long distance service to additional competition – has been accompanied by an access condition requiring local phone networks to open themselves to competing carriers if they wish to compete in new long-distance markets.<sup>3</sup>

Some railroads reiterate the oft-heard argument that any enhanced competition would undercut railroads’ financial viability, allegedly because it would prevent the railroads from engaging in differential pricing to recover full costs.<sup>4</sup> But as shown in the verified statement of Prof. Robert E. McCormick, the existence of intense competition in a range of industries including airlines, telephones, and hotels has not eliminated either differential pricing or

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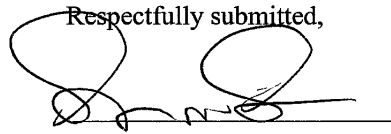
<sup>3</sup> The Council and APC have also suggested other means for implementing the Board’s proposed policy that mergers preserve and enhance competition. One is the proposal that merging railroads be required to publish rates to all gateways that are proportional to rates to the merged system’s favored gateway. CMA-3/APC-3 (November 17, 2000), Verified Statement of Edward G. Kammerer. Another proposal would require newly merged railroads to publish rates to all junction points regardless of whether a shipper has a binding contract with a connecting carrier. CMA-3/APC-3 at 8-9. The Council and APC in their reply comments also commended other proposals to the Board’s attention. CMA-4/APC-4 (December 18, 2000) at 3-4. All of these suggestions, however, are “second best” solutions which would entail more regulatory involvement than the Access Condition which is the preferred solution.

<sup>4</sup> See, e.g., Reply Comments of the Association of American Railroads at 6.

profitability.<sup>5</sup> Airlines may try to “cherry pick” first-class customers by offering better service, and may enter new city-pair markets at the expense of entrenched incumbent carriers, but efficient airlines that provide good prices and service not only survive, but flourish.

Although a few railroads make small concessions regarding the need to preserve existing competition,<sup>6</sup> the major railroads offer essentially nothing but opposition to the Board’s proposed policy that mergers be required to enhance competition. Given the broadly-perceived need to adopt specific pro-competitive remedies and standards to implement the Board’s proposed policy of enhancing competition, the Board has nowhere to look but to the comments on the shipper side if it is to realize its new merger policy aspirations.

Respectfully submitted,



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Dated and due: January 11, 2001

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<sup>5</sup> CMA-2/APC-2 (May 16, 2000), Verified Statement of McCormick at 23-41. No party in this proceeding has refuted Prof. McCormick’s testimony.

<sup>6</sup> See, e.g., Union Pacific’s suggestion that gateway preservation rules should apply whenever an existing bottleneck on a “principal route” is extended by a merger. Union Pacific’s Reply Comments on Proposed Merger Rules at 13-15. While this suggestion is positive, the Council and APC continue to believe that the preferred approach is the Access Condition, which relies more on marketplace competition and less on maximum rate litigation.

CERTIFICATE OF SERVICE

This is to certify that I have, this 11th day of January, 2001, caused copies of the foregoing comments to be served upon all parties of record by first class mail.

A handwritten signature in black ink, consisting of two large, stylized loops followed by a horizontal line and a small flourish.

Scott N. Stone